THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No.522 of 2004

United India Insurance Company Limited
Through its Divisional Manager
Divisional Office, Nainital Road,
Haldwani, District Nainital.

….. **Appellant.**

Versus

1. Smt. Rehana Begum W/O Late Sri Moh. Rijwan,
2. Km. Nazia Parveen, D/O late Sri Moh. Rijwan,
3. Km. Pukhsar Praveen, D/O lae Sri Moh. Rijwan,
4. Km. Muskan Praveen, D/O late Sri Moh. Rijwan,
5. Km. Khushboo Praveen D/O late Sri Moh. Rijwan,
   Respondent No. 2, 3, 4 and 5 minors, through their mother & legal guardian respondent no.1, Smt. Rehana Begum.
6. Sipte Hassan, S/O Sri Shabbir ahmad,
   All R/O Nai Basti, Jaspur, Tehsil-Kashipur, District Udham Singh Nagar.
7. Sri Kamar Alam, S/O Sri Shabbir Ahmad,
8. Sri Nayeem Ahmad, S/O Sri Najeer Ahmad
   Respondent nos. 7 and 8 R/O Nai Basti, Jaspur, Tehsil Kashipur, District Udham Singh Nagar.

…. **Respondents.**

Sri D.S.Patni, Advocate, learned counsel for the appellant.
Sri Sudhir Kumar and Sri M.S.Bisht, Advocate, learned counsel for the respondents no. 1 to 5.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

Date July 03, 2006.

This appeal under Section 30 of the Workmen's Compensation Act (***for short the Act)*** is directed against the judgment and award, dated 21-09-2004, passed by Workmen Compensation Commissioner/Assistant Labour Commissioner, Udham Singh Nagar ***(in short the Commissioner)*** in W.C. Case No. 11 of 2002, Smt. Rehana Begum and others V. Kamar Alam and others, whereby compensation of Rs. 4,48,859/- inclusive of interest @12% per annum

from the date of filing of claim petition till judgment, i.e. Rs. 1,25,939/- has been awarded against the appellant. Aggrieved, the appellant has come up in appeal.

Relevant facts for a just decision of the present appeal are that claim petition under the Act was filed by the claimant Smt. Rehana Begum before the learned Commissioner on the ground that Mohd. Razwan, husband of claimant no.1 was driver of Truck No. DIL-163 under the employment of truck owners Kamar Alam and Nayeem Ahmad, who died due to accidental injuries suffered by him in the course of his employment on 27-5-2001. The truck in question was insured with United India Insurance Company-appellant. Hence the claim petition was filed.

The owners of the vehicle jointly filed their written statement and admitted that the deceased was working as driver, who died as a result of accidental injuries. According to them, the deceased workman was getting Rs. 3,000/- per month as wages and he was aged 26 years. The appellant-insurer also filed its separate written statement and resisted the claim petition for want of knowledge. In the additional pleas, it was asserted that the deceased died due to his own negligence and that the insurer is not liable for compensation in the circumstances of the case. It was also pleaded that the deceased was not having a valid driving licence and there was violation of policy conditions. The insurer was not liable to pay compensation as well as interest.

The learned Commissioner recorded the evidence led by the parties, heard them and after perusing the material on record passed the impugned award as mentioned earlier.

The impugned judgment and award has been assailed by the appellant on the ground that that the award is liable to be set aside as no issues were framed by the learned Commissioner; that the monthly salary of the deceased had wrongly been taken as Rs. 3,000/- per month and that in view of the Apex Court judgment in Writ

P.J.Narayan Vs. Union of India and others [(2006) 5 Supreme Court Cases, Page 200], the Insurance Company is not liable to pay interest. On the other hand, the learned counsel for the respondents submitted that the present appeal is squarely covered by the judgment of this Court in the case of ***"The New India Assurance Company Ltd. Vs. Smt. Meera Devi and another [2006(1) U.D., 278],*** wherein it was held that the issue raised by the insurance company had no substance in view of the Apex Court's decision in the case of ***L.R.Ferro Alloys Ltd. Vs. Mahavir Mahto and another [(2002) 9 SCC 450]*** and therefore, the learned Commissioner was justified in awarding 12% interest.

We have heard rival contentions of the parties and perused the record. The only substantial question law that arises in the present appeal is whether the award of interest @ 12% per annum is legally justified or not.

So far as the verdict of the Apex Court in the case of ***P.J.Narayan (supra)*** is concerned, the Apex Court after hearing the parties observed that there is no statutory liability on the Insurance Company. The statutory liability under the Workmen's Compensation Act is on the employer and the insurance is a matter of contract between the insurance company and the insured. It was further observed that it is always open to the Insurance Company to refuse to insure. The view taken by the Apex Court in that case was that in the absence of any statute, Insurance Company cannot be forced by the Courts to take on liabilities, which they do not want to take. Therefore, the case of *P.J.Narayan (supra)* is of no avail.

The matter regarding award of interest @ 12% per annum has already been considered by this Court in the of *Smt. Meera Devi (supra)* and the facts of the present case are squarely covered by the judgment of this Court dated 27-02-2006 in the case of ***" The New India Assurance Company Ltd. Vs. Smt. Meera Devi and another'' (supra),*** therefore, we are not inclined to accept the argument of the

learned counsel on this score. We hold that the award of interest @ 12% per annum by the learned Commissioner is fully justified and in accordance with the provisions of Section 4-A of the Act.

Accordingly, the question of law is answered against the appellant and in favour of the claimant-respondents.

In the result, the appeal lacks merit and must fail.

The appeal is dismissed. The judgment and award, under appeal, is upheld. No order as to costs.

(B.S.Verma, J.) **(P.C.Verma,J.)**

RCP